



September 12, 2002

Mr. Duncan R. Fox
Deputy General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR2002-5115

Dear Mr. Fox:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 168159.

The Texas Department of Public Safety (the “department”) received a request for several categories of information regarding various materials utilized in training personnel to identify vehicles and/or individuals engaged in drug smuggling, as well as any consent to search forms prepared by a specified officer and any complaints filed against this officer. You state that you will provide the requestor the responsive information concerning the specified officer. However, you claim that the remaining requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.¹

Section 552.108(b)(1) of the Government Code excepts from public disclosure “[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution” if “release of the internal record or notation would interfere with law enforcement or prosecution.” Gov’t Code § 552.108. When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would interfere with law enforcement. Open Records Decision No. 434 at 3 (1986). We have previously held that portions of police procedures are excepted under section 552.108(b)(1) because release of the procedures would impair an officer’s ability to enforce the law and

¹We assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

would place individuals at an advantage in confrontations with the police. *See* Open Records Decision No. 531 (1989). However, portions of the procedures that relate to generally known common-law rules, constitutional limitations, or Penal Code provisions are deemed public information. *Id.* at 3.

With respect to the submitted training materials, you argue that release of this information “would have an adverse impact on law enforcement” and enable suspected drug traffickers to deceive peace officers. You also contend that release of submitted information could endanger the lives of officers “by alerting persons engaged in illegal drug trafficking . . . to the techniques utilized by officers to identify and intercept their shipments.” After reviewing your arguments and the submitted information, we conclude that you may withhold most of the submitted information. *See id.*; Gov’t Code § 552.108(b)(1). However, you have failed to demonstrate how the release of the submitted forms, which we have marked, would reveal any technique or strategy utilized by law enforcement. Thus, you may not withhold the submitted forms under section 552.108 of the Government Code.

We note, however, that these forms include a report that contains a social security number that may be excepted from required public disclosure under section 552.101 of the Government Code² in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990*. *See* Open Records Decision No. 622 (1994). It is not apparent to us that the social security number contained in the report at issue was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and is, therefore, confidential under section 405(c)(2)(C)(vii)(I). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, the department should ensure that this number was not obtained or is not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

This report also reveals information that is excepted under section 552.130 of the Government Code. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator’s or driver’s license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Thus, you must withhold the license plate and vehicle identification numbers we have marked pursuant to section 552.130 of the Government Code.

²Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

In summary, we conclude that: 1) you may withhold most of the submitted information pursuant to section 552.108; 2) the social security number might be excepted from required public disclosure under section 552.101 in conjunction with the federal law; and 3) you must withhold the license plate and vehicle identification numbers we have marked pursuant to section 552.130. The remaining information we have marked must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Montgomery Meitler".

W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/sdk

Ref: ID# 168159

Enc: Submitted documents

c: Ms. J. Lynda Smith
Attorney/Mediator
203 West 8th, Suite 320, Lobby Box 14046
Amarillo, Texas 79101
(w/o enclosures)